

BERRY, SHELNUTT, DAY & HOFFMAN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

EDWARD F. BERRY†
J. MARK SHELNUTT
W. CHARLES DAY, JR.‡
PETER B. HOFFMAN
JULIA F. SLATER
MATT A. HIRSCH
REBECCA D. ROSS^Q

1022 2ND AVENUE
COLUMBUS, GA 31901
TELEPHONE (706) 324-4343
TELECOPIER (706) 322-9535

233 12TH STREET, SUITE 100A
COLUMBUS, GA 31901
TELEPHONE (706) 324-4375
TELECOPIER (706) 653-5681

MAILING ADDRESS:
P.O. BOX 1437
COLUMBUS, GA 31902-1437

† ALSO ADMITTED IN ALABAMA
‡ ALSO ADMITTED IN PENNSYLVANIA
Q ALSO ADMITTED IN PENNSYLVANIA

July 14, 2004

Andrew Thompson
Smith, Gambrell & Russell, LLP
1230 Peachtree Street, N.E.
Suite 3100
Atlanta, GA 30309-3592

VIA: Certified Mail

Our Client: Doris Denise Byrd
D/A: November 04, 2003
Place of Incident: Phenix City, AL
Claim No.: 03-GLBI-369/Alton Dupuis
Defendant: McKenzie Tank Lines, Inc.

Dear Mr. Thompson:

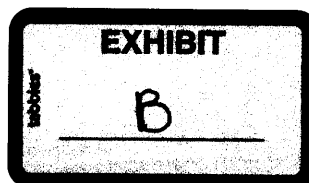
As you are aware, this firm has been retained to represent the interests of Doris Denise Byrd in connection with her claim for bodily injury resulting from the November 04 2003 trucking accident and resultant chemical spill. I am setting forth below our proposal to settle this matter on an amicable basis, without the pursuit of litigation.

COVERAGE

The information that has been provided to date confirms that McKenzie Tank Lines have liability insurance with AIG, but have a self insurance retention, for which you are responsible. No coverage defenses have been asserted.

LIABILITY

Our investigation reveals that the liability for this accident rests completely with the driver of your truck, Alton James Dupuis. Mr. Dupuis overturned his truck and the resulting damage caused an immediate and significant chemical spill of Dimethylamine. Ms. Byrd was on her way



Andrew Thompson
July 14, 2004
Page two

to work, after taking her daughter to school and was traveling several car lengths behind your truck, when the accident occurred. As soon as she was able to get through, she continued on to work, not realizing the significance of the chemical spill.

INJURIES

Shortly after reaching her work, Ms. Byrd began experiencing burning and redness in her eyes, shortness of breath, coughing and headache. She went to the St. Francis emergency room where she was forced to strip down to be "detoxified", which was a humiliating procedure. She was diagnosed with chemical pneumonitis and chemical conjunctivitis. She was given medications and sent home.

Her condition had worsened by the next day, so she returned to the emergency room where it is documented that she had continued complaints of wheezing, shortness of breath, coughing, headaches, and chest pain. She was treated again and instructed to follow up with her regular physician.

Ms. Byrd was then examined by Dr. Charles Calhoun, who treated her for the injury to her eyes. He describes her eyes as red and swollen. Her vision was blurred and she had complaint of headache. She was given medication for her eyes and seen in follow up three additional times, until she was released on 01/16/04.

When she got into see her regular physician, Dr. Steven Lucks, on November 10, 2003, many of her complaints had worsened and the anxiety over her condition was affecting both her mental and physical health. His office records indicate fatigue, sore throat, hoarseness, difficulty swallowing, coughing, chest pain, wheezing, and headache. He felt her condition warranted hospitalization, so she was checked into Doctors' Hospital.

Ms. Byrd was hospitalized from 11/10/03 until 11/13/03. Her treatment there included a variety of diagnostic tests, including a bronchoscopy. Her discharge diagnosis included conjunctivitis, reactive airway disease, wheezing, shortness of breath, anxiety, and history of irritable bowel syndrome and bi-polar disorder. She was discharged with 9 different medications.

On her 11/19/03 follow up with Dr. Lucks, Ms. Byrd still had ongoing problems with chest pain, shortness of breath, wheezing, headache and depression. Many of these problems continued through her next visit of 01/07/04, when her pulmonary function test showed obstructive defect with significant bronchodilator response. These findings were consistent with stage I chronic obstructive pulmonary disease or mild asthma.

Andrew Thompson
 July 14, 2004
 Page three

MEDICAL SPECIALS

St. Francis Hospital	\$2,512.97
Emergency Med Spec.	418.00
Doctors' Hospital	11,809.30
Dr. Stephen Lucks	868.90
Dr. Charles Calhoun	228.00
Radiology Associates	114.00
Total Medical Specials	\$15,951.17

WAGE LOSS

Denise Byrd was employed as a nursing assistant for Dr. Jose Canado, when this accident occurred. She is paid hourly at the rate of \$12.00 per hour and works a 40 hour week. As a result of this accident, she missed a total of 84.75 hours. Her total wage loss was \$1017.00.

OFFER OF SETTLEMENT

The injuries that Denise Byrd suffered as a result of this environmental accident have caused her a great deal of pain, discomfort and inconvenience, limiting her ability to perform her daily activities for many weeks. She is very concerned about the possibility that the toxic chemicals she inhaled will cause her significant health problems, in the future. She is familiar some of the many studies out there that link chemical exposures to a variety of serious illnesses and cancers and is frightened about that possibility. She has incurred substantial medical expenses and missed over 80 ours of work, both of which have caused financial strain to her family.

The jurisdiction of this case is one that is favorable to the Plaintiff and tends to award liberal verdicts in personal injury cases. Considering the facts of this accident, the damage done to her lungs, and the uncertainty of how Ms. Byrd's health may be affected in the future, a high verdict would be likely. As Ms. Byrd has an estimated life expectancy of approximately 48 years, compensation of only \$1.50 per hour for her life expectancy would lead to an award of \$630,720.00.

Based on these aspects of Denise Byrd's claim, we have evaluated this claim at Six Hundred Fifty Thousand Dollars (\$650,000.00). Please review the materials provided in this package and respond with your offer of settlement within thirty (30) days of the date of this mailing.

Andrew Thompson
July 14, 2004
Page four

Please respond to the undersigned with your response within the allotted time limit, regarding the above settlement offer.

If you have any questions or need any additional information, please do not hesitate to contact myself or my case manager, Lori Lipocky. We look forward to your response.

Sincerely yours,

BERRY, SHELNUTT, DAY & HOFFMAN
A Professional Corporation



W. Charles Day, Jr.
Attorney at Law

CC: Doris Denise Byrd



SCANNED

PATIENT REGISTRATION

DATE & TIME 11/04/2003 10:48AM		ACCT # 000705523512									
MED REC 000003720778	SERVICE GND	ROOMED	PT E	FC S	SEX F	RACE W	MIS S	ACC	RELIGION NON	PUB YES	
NAME / ADDRESS / PHONE # BYRD, DORIS DENISE 990 GRANTHAM DR CATAULA GA 31804 706 6284339		BIRTHDAY / AGE 09/19/1971 32Y		NAME / ADDRESS / PHONE DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA 31904							
56-65-1477		COUNTY		EMPLOYMENT RELATED YES NO		ADM SOURCE EMERGENCY OUTPATIENT					
NAME / ADDRESS / PHONE BYRD, PATRICK 990 GRANTHAM DR CATAULA GA 31804 706 6284339		RELATIONSHIP H		NAME / ADDRESS / PHONE CMA DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA31904							
NAME / ADDRESS / PHONE BYRD, DORIS DENISE 990 GRANTHAM DR CATAULA GA 31804 706-628-4339		SS# / RELATION 01 258-65-1477		NAME / ADDRESS / PHONE CMA DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA31904							
INS CODE / NAME / ADDRESS / PHONE Q02 B C OF GA		POLICYHOLDER BYRD DORIS DENISE RELATIONSEX 01		POLICY # / GROUP XKC25935099202 S		EMPLOYER DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS EM15					
INS CODE / NAME / ADDRESS / PHONE		POLICYHOLDER		POLICY # / GROUP		EMPLOYER Anhydrous gas					
INS CODE / NAME / ADDRESS / PHONE		POLICYHOLDER		POLICY # / GROUP		EMPLOYER					
INS CODE / NAME / ADDRESS / PHONE		POLICYHOLDER		POLICY # / GROUP		EMPLOYER					
ADMITTING/ATTENDING PHYSICIAN LUCKS		HAGUES MICHAEL		DIAGNOSIS EYE IRRITATION/COUGHING							
DISCHARGE INFO <input type="checkbox"/> ALIVE <input type="checkbox"/> EXPIRED		DISCHARGE DATE		LOS		AUTOPSY YES		ADMIT BY BYRD00077			

St. Francis
HospitalEMERGENCY /
OUTPATIENT
RECORD

000003720778 | 000705523512

BYRD, DORIS DENISE

09/19/1971 32Y WSF 11/04/2003 10:48AM

LUCKS

PRIVATE PHYSICIAN

E.R. PHYSICIAN

ALLERGIES:

INT.	ORD	LAB	ORD	CARDIAC/RESP	ORD	X-RAYS	ORD	ORTHOPEDICS
		BLOOD WK.		EKG		R L HAND		CRUTCHES
		CBC, HH		MONITOR		R L WRIST		SPLINT
		PT		O2 SAT		R L ELBOW		ANKLE
		PTT		ABG		R L SHOULDER		POSTERIOR
		SMA7		O2		PELVIS		VELCRO
		SMA 20		NEB RX		R L HIP		SUGAR T.
		LIVER PANEL		ALBUTEROL		R L KNEE		ACE
		LIPASE		WATROVENT		R L ANKLE		KNEE IMB
		CES		IV THERAPY		SPINE		SLING
		ESR		INT		(C T L)		SHOULD IMB
		CCU PANEL		NS NS		CT - HEAD		ORTHO SHOE
		LEVELS:		D5		ABD		
		DIGOXIN		CC/HR		CHEST		ADMIN.
		DILANTIN		BOLUS		PELVIS		OLD RECORDS
		THEOPHYLLIN		CARDIAC MEDS		US - GB		OLD EKG'S
		ETOH		NTG 1/150 SL		PELVIS		OLD X-RAYS
		UA		ASA		PO		
		UPT, SPT		HEPARIN				
		URINE DR SC		BOLUS				
		CULTURE		DRIP				
		URINE		CAPTOPRIL				
		BLD		LOPRESSOR 5MG				
		GC/CHLA		N X 3				
		WET PRKOH		THROMBOLYTICS				

M.D. NOTES

Initial Diagnosis: IRRITATION EYS COUGHING/12

HISTORY: AGREE WITH CLINICIANS HX (HISTORY)

PAST HISTORY:

PAST SURGERIES:

SOCIAL HISTORY:

FAMILY HISTORY:

PHYSICAL EXAM:

HEENT - NL

NECK - NL

LUNGS - NL

COR - NL

ABD - NL

EXTRM - NL

NEURO - NL

SKIN - NL

MANAGEMENT - I HAVE REVIEWED LAB DATA AND TREATMENT
(PA CHARTS) PLAN AND:

CONCUR WITH PLAN

CHANGE

CONSULTS

1. DR	CALL AT
DR	RESPONSE
1. DR	CALL AT
DR	RESPONSE

ADVICE GIVEN TO PATIENT:

Return immediately if 7mg SOB on
visual problems- Pk 4 Mr. Luckr ☐ NL DUTY X DAYSin 3-5 days for ☐ BED REST X DAYS12-1 ☐ LIGHT DUTY X DAYS☐ NO LIFT > LBS☐ NO STANDING X DAYS

DIAGNOSIS: 1. Chemical pneumonia (2) Chemical conjunctivitis

DISPOSITION: TIME 2:50 CONDITION: 2:50 ADMIT TO: ☐ HOME ☐ DR'S OFFICE ☐ AMA ☐ LEFT W/O TREATMENT ☐ TRANSFER ☐ EXPIRED☐ CORONER ☐ POLICEPHYSICIAN'S
SIGNATURE

BYRD00078

SCANNED



St. Francis

We care for life.

PATIENT REGISTRATION

DATE & TIME 11/05/2003 17:28		ACCT # 000705525533									
MED REC 000003720778	SERVICE GND	ROOMED	PT E	FC G	SEX F	RACE W	MRS S	ACC	RELIGION NON	PUB YES	
NAME / ADDRESS / PHONE # BYRD, DORIS DENISE 990 GRANTHAM DR CATAULA GA 31804 706 6284339			BIRTHDAY / AGE 09/19/1971 32Y		NAME / ADDRESS / PHONE DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA 31904						
256-65-1477			COUNTY		CONTACT PERSON EMPLOYMENT RELATED YES NO		ADM SOURCE EMERGENCY OUTPATIENT				
NAME / ADDRESS / PHONE BYRD, PATRICK 990 GRANTHAM DR CATAULA GA 31804 706 6284339			RELATIONSHIP HUSBAND		NAME / ADDRESS / PHONE CMA DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA31904						
NAME / ADDRESS / PHONE BYRD, DORIS DENISE 990 GRANTHAM DR CATAULA 706-628-4339			SS# / RELATION 01 256-65-1477 GA 31804		NAME / ADDRESS / PHONE CMA DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA31904						
INS CODE / NAME / ADDRESS / PHONE B88 BLUE CROSS GEORGIA PO BOX 9907 COLUMBUS, GA 31908			POLICYHOLDER BYRD DORIS DENISE RELATIONSEX SELF		POLICY # / GROUP XKC2595099202 S		EMPLOYER DR JOSE CANEDO ST FRANCIS MEDICAL PARK COLUMBUS GA31904				
INS CODE / NAME / ADDRESS / PHONE			POLICYHOLDER		POLICY # / GROUP		EMPLOYER				
			RELATIONSEX								
INS CODE / NAME / ADDRESS / PHONE			POLICYHOLDER		POLICY # / GROUP		EMPLOYER				
			RELATIONSEX								
INS CODE / NAME / ADDRESS / PHONE			POLICYHOLDER		POLICY # / GROUP		EMPLOYER				
			RELATIONSEX								
ADMITTING/ATTENDING PHYSICIAN LUCKS			SMITH DAVID		DIAGNOSIS SOB VISIAL NAUSEA 48 HRS 46						
			DISCHARGE INFO <input type="checkbox"/> ALIVE <input type="checkbox"/> EXPIRED		DISCHARGE DATE		LOS		AUTOPSY YES		

BYRD00064

EMERGENCY /
OUTPATIENT
RECORD

000003720778 S 000705525533

BYRD, DORIS DENISE

09/19/1971 32Y WSF 11/05/2003 05:28PM

LUCKS

PRIVATE PHYSICIAN

E.R. PHYSICIAN

ALLERGIES:

INT.	ORD	LAB	ORD	CARDIAC/RESP	ORD	X-RAYS	ORD	ORTHOPEDICS
		BLOOD WK		EKG		R L HAND		CRUTCHES
		CBC, HH		MONITOR		R L WRIST		SPLINT
		PT		O2 SAT		R L ELBOW		ANKLE
		PTT		ABG		R L SHOULDER		POSTERIOR
		SMA7		O2 _____ L NC		PELVIS		VELCRO
		SMA 20		NEB RX		R L HIP		SUGAR T.
		LIVER PANEL		ALBUTEROL		R L KNEE		ACE
		LIPASE		WATROVENT		R L ANKLE		KNEE IMB
		CES		IV THERAPY		SPINE		SLING
		ESR		INT		(C T L)		SHOULD IMB
		CCU PANEL		NS NS		CT - HEAD		ORTHO SHOE
		LEVELS:		D5 _____		ABD		
		DIGOXIN		@ _____ CC/HR		CHEST		ADMIN.
		DILANTIN		BOLUS _____ CC		PELVIS		OLD RECORDS
		THEOPHYLLIN		CARDIAC MEDS		US - GB		OLD EKG'S
		ETOH		NTG 1/150 SL		PELVIS		OLD X-RAYS
		UA		ASA _____ PO		CRX		
		UPT, SPT		HEPARIN		ADDITIONAL ORDERS		
		URINE DR SC		BOLUS				
		CULTURE:		DRIP				
		URINE		CAPTOPRIL				
		BLD		LOPRESSOR 5MG				
		GC/CHLA		IV X3				
		WET PRKOH		THROMBOLYTICS				

M.D. NOTES

Initial Diagnosis: SOB VISIAL NAUSEA 48 HRS 46

HISTORY: AGREE WITH CLINICIANS HX (HISTORY)

PAST HISTORY:

PAST SURGERIES:

SOCIAL HISTORY:

FAMILY HISTORY:

PHYSICAL EXAM:

HEENT - NL

NECK - NL

LUNGS - NL

COR - NL

ABD - NL

EXTRM - NL

NEURO - NL

SKIN - NL

- ① Continue current meds
 ② All Dr. Davis 1wk
 ③ Work excuse 3 d
 ④ Return if sx worse

CONSULTS

1. DR	CALLLED AT
DR	RESPONSE
1. DR	CALLLED AT
DR	RESPONSE

ADVICE GIVEN TO PATIENT:

MANAGEMENT - I HAVE REVIEWED LAB DATA AND TREATMENT

(PA CHARTS) PLAN AND:

CONCUR WITH PLAN

CHANGE

DIAGNOSIS:

DISPOSITION: TIME

CONDITION:

ADMIT TO:

HOME

DR'S OFFICE

AMA

LEFT W/O TREATMENT

TRANSFER

EXPIRED

CORONER

POLICE

PHYSICIAN'S SIGNATURE

☐ NL DUTY X _____ DAYS☐ BED REST X _____ DAYS☐ LIGHT DUTY X _____ DAYS☐ NO LIFT > _____ LBS☐ NO STANDING X _____ DAYS

BYRD00065